

## Streamlining the Permit Process while Protecting Public Waters

# Proposed Rule – Waters Designations – NR 1

### Summary of Rule Proposal

Wisconsin Act 118 created a three-tier permit system intended to speed permit decisions without reducing protection of fish and wildlife habitat, navigation, water quality and natural scenic beauty (public rights). A number of activities in or along lakes and streams that previously required permits from the Department of Natural Resources (DNR) are exempt under Act 118 unless they are located in designated waters. This proposed rule lays out the policy DNR follows to meet the state's constitutional responsibility as trustee of public waters. The proposed rule identifies designated waters of high quality and sensitivity where exemptions to the permitting process are not allowed. People can pursue projects on these waters, but must receive some DNR review first.

The Natural Resources Board in June approved holding hearings on this proposed permanent rule – that is the same as the temporary rule in place today. In June, the legislature's Joint Committee on Administrative Rules voted to suspend the temporary rule unless the department modified it. DNR has been working with stakeholders to complete that task. A modified rule is described below and will be considered by the Natural Resources Board in August.

### Policy Statement

NR 1 includes a policy statement to recognize the State's affirmative duty to enhance public rights in navigable waters. These public rights are long established through the state Constitution, court rulings and administrative rules to include, but not be limited to, a right to enjoy fishing, hunting, boating, scenic beauty and other recreation. The policy statement also acknowledges that DNR shares this duty with the legislative and judicial branches of government, and to reflect the agency's understanding that no branch has unrestricted authority to modify the Public Trust Doctrine. As the day-to-day trustee of public waters, the Natural Resources Board must consider this obligation in making decisions on administrative rules and direct department staff accordingly. Finally, the policy statement recognizes the importance of public waters to Wisconsin's recreation and economy. And it restates the legislative intent of Act 118 to streamline the permitting system without weakening protection for public waters and citizens' rights to enjoy fishing, hunting, boating, natural scenic beauty and other rights in those waters.

### Waters Designations

The temporary NR1 adopted by the Natural Resources Board describes and names waters that are areas of special natural resource interest - where by law exemptions are not available - along with describing and setting a process for identifying public rights features (that serve as location standards for three of the exemptions and two general permits). Act 118 authorized DNR to name waters that possess significant scientific value as areas of special natural resource interest, or ASNRI. NR1 describes waters that might be of scientific interest. It specifies that only the Natural Resources Board may make such designations by rule (which is subject to legislative review).

In temporary NR1, public rights features affect the pier, dredging and culvert exemptions and the permanent boathouse and pond general permits. Public rights features are generally parts of lakes or streams. They are physical features recognizable to water resources professionals as well as many landowners, anglers and boaters. They are described and are designated by the same process used to list trout streams (data requirements; public notice in the newspaper, to local governments and the legislature; and opportunity for public hearing, leading to a decision whether to designate). Where they are not yet described, then landowners are asked to make a reasonable attempt to recognize and avoid them. Because the law was already in effect, the Natural Resources Board pre-designated mapped sensitive areas of lakes (areas of unique or diverse aquatic plants) and named waters in the DNR's Land Legacy Report (water "gems" of the state) as locations of public rights features.

Finally, temporary NR1 designates Priority Navigable Waters to determine where state permits are required for large grading projects at the water's edge. Act 118 specifies that priority navigable waters are those with sensitive fish and aquatic habitat. In addition to the statutory designations of Outstanding & Exceptional Resources Waters, trout

stream, state natural areas and lakes less than 50 acres in size, temporary NR1 designates all ASNRI and waters with public rights features as priority navigable waters.

### Previous Regulations

Prior to Act 118, all public waters were subject to the same permit requirements. Permits were approved if DNR staff could determine “no detrimental impact to public rights.”

### Issues and Alternatives

The DNR has developed an alternative approach that would make exemptions available on more waters but sets additional design, construction and location standards for projects in specific waters. Fact sheets for each activity show what exemption standards are needed to provide the same level of protection as the temporary NR1.

Here are the areas of special natural resource interest (where exemptions aren’t available) under the temporary NR1 and the modified NR 1.

Temporary NR1	Modified NR 1
Outstanding & exceptional resource waters	Outstanding & exceptional resource waters
State natural areas	State natural areas
Trout streams	Trout streams
Waters with water-dependent endangered, threatened, special concern species & unique natural communities	Waters with water-dependent endangered, threatened, special concern species & unique natural communities
State or federal wild or scenic rivers	State or federal wild or scenic rivers
Wild rice waters	Wild rice waters
Waters in areas with a Special Area Management Plan or equivalent (Great Lakes tribes)	Waters in areas with a Special Area Management Plan or equivalent (Great Lakes tribes)
Musky waters with self-sustaining populations (categories 0, 1 and 2)	
Walleye waters with self-sustaining populations in the ceded territories	
Tributaries and connecting rivers used by sturgeon during their life cycle	
Perennial tributaries to trout streams	

### What do YOU think?

DNR seeks your input on the proposed rules. You can participate in one of several ways.

Fill out a written questionnaire at a public hearing **open house**.

Send comments over the **internet** at

<https://apps4.dhfs.state.wi.us/admrules/public/Rmo?nRmold=167>

**Testify** at a public hearing (see locations, dates and times by clicking on DNR’s page, then on “Permits & Licenses,” then “Waterway & Wetlands.”

**Mail** your written comments to Ms. Roberta Lund, DNR-FH/3, P.O. Box 7921, Madison, WI, 53707-7921.

**Comments accepted through August 9, 2004**